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IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1921.

No.  105

SIOUX CITY BRIDGE COMPANY,  
*Petitioner,*

*vs.*

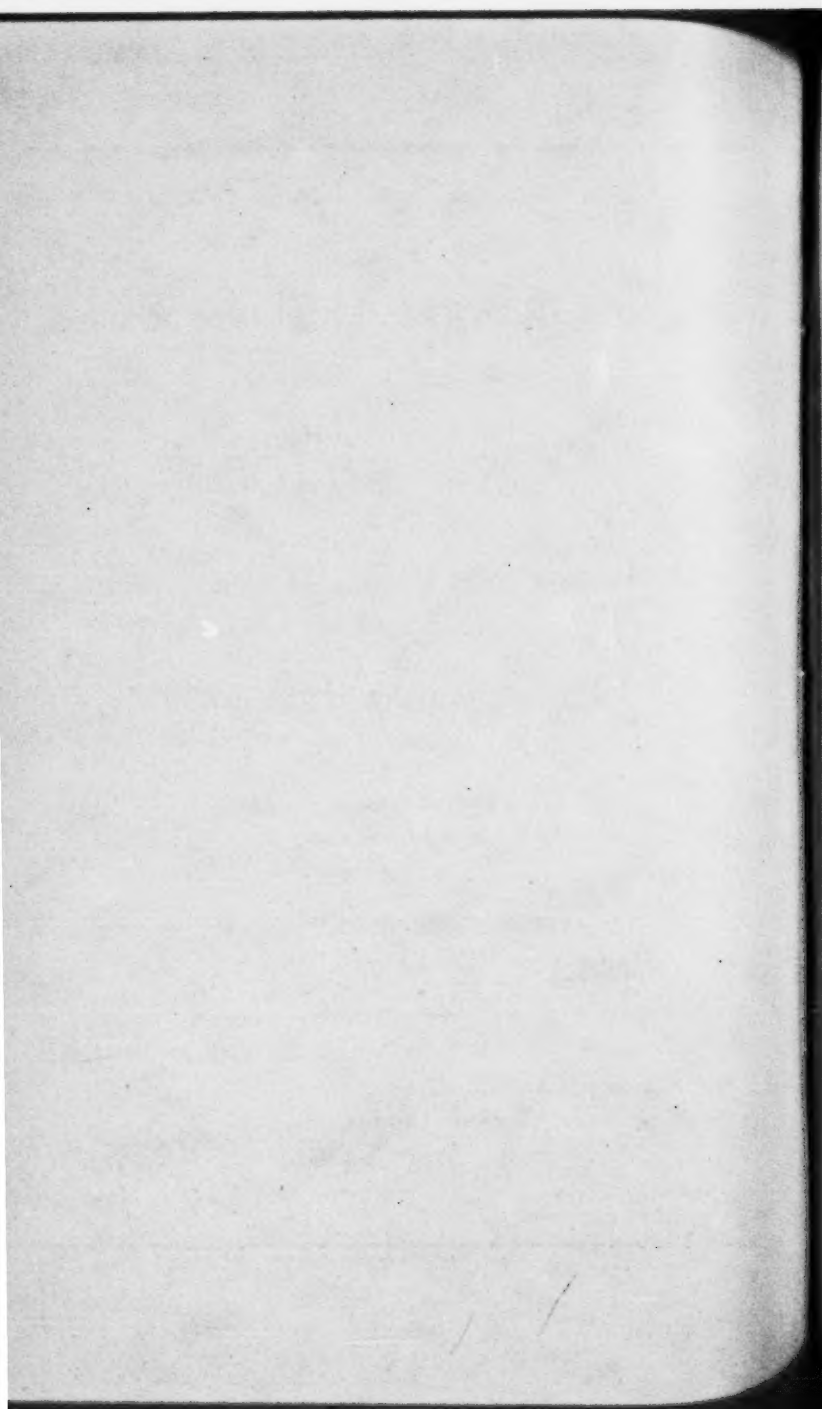
DAKOTA COUNTY, NEBRASKA,  
*Respondent.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF NEBRASKA.

**REPLY BRIEF OF PETITIONER.**

WYMER DRESSLER,  
*Counsel for Petitioner.*

F. W. SARGENT, Chicago, Illinois,  
R. N. VAN DOREN, Chicago, Illinois,  
*Of Counsel.*



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**Supreme Court of the United States.**

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SIOUX CITY BRIDGE COMPANY,  
*Petitioner,*  
*vs.*  
DAKOTA COUNTY, NEBRASKA,  
*Respondent.*

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
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REPLY BRIEF OF PETITIONER.

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I.

Respondent concedes that petitioner is entitled to relief under the Fourteenth Amendment if the discrimination complained of exists. (See Respondent's Brief, page 15.)

II.

The Supreme Court of Nebraska concedes the discrimination (R. 129), but denies relief upon the ground that "the proper remedy is to have the property as-

sessed below its true value raised rather than to have property assessed at its true value reduced." (R. 129.)

The Supreme Court of Nebraska also concedes that this rule is in conflict with authorities in other jurisdictions. (R. 129.)

The judgment of the Supreme Court of Nebraska was not based upon the ground that petitioner was not aggrieved, as now contended by respondent, but upon the ground that it was petitioner's duty to cause all other property to be raised rather than to have its own lowered to meet the general level.

### III.

Therefore, the only question before this court is one of law, and it is unnecessary to review the facts, although the record clearly shows that other property was assessed at 55 per cent and petitioner's property at 100 per cent or more of its value.

### IV.

If it should be contended that the Supreme Court of Nebraska has not found the discrimination to exist, then it must be conceded that it has made no finding at all on this question, and has refused to consider the same upon the theory and for the erroneous reason that petitioner must cause all other property to be raised rather than have its value lowered to the general level.

In either event the question is one of law.

## V.

The Nebraska rule conflicts with the great weight of the decisions in other states.

*Illinois.*

- People v. C. B. & Q. Ry.*, 300 Ill., at page 404.  
*Supervisors of Bureau County v. C. B. & Q.*, 44 Ill. 229.  
*C. & N. W. R. R. v. Supervisors of Boone County*, 44 Ill. 240.  
*People v. Illinois Central R. R. Co.*, 273 Ill. 220.  
*People v. Keokuk & Hamilton Bridge Co.*, 287 Ill. 246.

*Texas.*

- Porter v. Langley*, 155 S. W. 1042.

*Iowa.*

- Iowa Central Railroad v. Board of Review*, 157 N. W. 731.

*Arkansas.*

- Ex parte Fort Smith & Van Buren Bridge Co.*, 36 S. W. 1060.

*New Hampshire.*

- Cochecho Co. v. Stratford*, 51 N. H. 455.

*Connecticut.*

- Randall v. City of Bridgeport*, 63 Conn. 321; 28 Atl. 523.

*Kansas.*

*C. B. & Q. R. R. v. Board of Commissioners of Atchison County*, 54 Kan. 781; 39 Pac. 1039.

The Nebraska rule is also contrary to the federal decisions and invades petitioner's rights protected by the Fourteenth Amendment.

*Taylor, et al., v. Louisville & N. R. Co.*, 88 Fed. 350.

See also cases cited in petitioner's original brief, page 11.

CONCLUSION.

The error of the Supreme Court of Nebraska consists in the refusal to equalize upon the ground that petitioner must assume the political duty of compelling administrative officers to raise the value of each separate tract or parcel of property belonging to each separate taxpayer in the taxing district.

Petitioner's position is most clearly expressed by the opinion in the Taylor case, *supra*. After stating that discrimination existed, the court said:

"This is a flagrant violation of the clause of the Constitution forbidding discrimination in taxation between different species of property. That clause is self-executing. *Reelfoot Lake Levy District v. Dawson*, 97 Tenn. 160; 36 S. W. 1043. *How is it to be remedied? It is said on behalf of the defendants that the only method consistent with the Constitution is by raising the assessments of the real and personal property. This is no remedy at all.*"

What was true in the Taylor case is equally true in the case at bar. It cannot be possible that to secure equal treatment in taxation the individual is charged

with the burden and expense of making every other taxpayer in the taxing district a party defendant and then proceeding to a trial to be conducted by the aggrieved party, for the purpose of raising the value of each separate piece or parcel of property in the district belonging to each separate taxpayer. This is a duty imposed by the law of Nebraska upon the administrative and judicial officers charged with the administration of the statutes, and to require the individual to perform the public or political obligations incumbent upon the state as a whole, in order to secure equality, is to deny to the individual the equal protection of the laws.

The Supreme Court of Nebraska says petitioner did not follow the proper remedy, and that we should have compelled every other taxpayer to bear his equal proportion of the tax burden. Just how we would proceed has never been demonstrated. The Supreme Court of Nebraska did not suggest the method in this case, neither did it suggest the method in the preceding case which it cites as authority in this case, to wit: the case of *Lincoln Telephone & Telegraph Co. v. Johnson Co.*, 102 Nebr. 254.

Respondent makes no suggestion as to the method which might be pursued. We are unable to discover what this remedy is and how it can be applied in any practical way. Indeed, we know of no legal procedure available unless it is to bring some sort of an action against every other taxpayer in the district as well as against the assessing authorities, for certainly every other taxpayer would be entitled to his or her day in court if the remedy suggested is to be pursued. That such a procedure would be impracticable is clearly apparent. See Taylor case, *supra*.

Even if some theory might be devised to apply the



remedy suggested, nevertheless it still remains true that the aggrieved party is thereby required, at his own expense, to assume the burdens of government and to discharge an obligation, in order to protect himself, that the people have lodged in their administrative and judicial tribunals.

Real estate in Dakota County was assessed at the average value of \$61.40 an acre, including improvements. This was 55.7 per cent of its true value, as shown by the assessment ratio process based upon the numerous transfers of real estate, as shown by the official records of the office of the County Recorder. (Record 84; also 79 to 84, inclusive; also 96.)

The court will take judicial notice of the fact that Dakota County is located in the northeast corner of Nebraska, the richest agricultural portion of that State. It is quite apparent that no one will seriously contend that \$61.40 an acre is the full value of agricultural land in such a territory. And this was the value assessed in the year when wheat was worth on the farm \$2.00 a bushel, corn \$1.25 per bushel and oats 50c per bushel. (R. 114.)

The Supreme Court of Nebraska clearly recognized that the great weight of the evidence established discrimination. It could not do otherwise under the showing made. It disposed of this branch of the case by conceding the discrimination, and said:

"When property is assessed at its true value and other property in the district is assessed below its true value, the proper remedy is to have the property assessed below its true value raised rather than to have property assessed at its true value reduced. *Lincoln Telephone & Telegraph Co. v. Johnson Co.* 102 Nebr. 254. In the argument of appellant the soundness of this ruling is assailed, and authorities in other jurisdictions are cited which seem at

variance with our holding. We are not willing, however, to recede from the rule of that case. It follows from what has been said that the judgment of the District Court should be and it hereby is affirmed."

We respectfully submit that this cause should be reversed.

Respectfully submitted,

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